

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2351 of 1987

with

First Appeal No.2352 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

IBRAHIM MOHMAD MANSOOR

Versus

ADDITIONAL SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR AJ PATEL for Petitioner

Mr.K.G. Sheth, AGP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 04/04/2000

C.A.V. JUDGMENT : (Per: Kadri, J.)

1. Appellants-original claimants, have filed both these appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, challenging common judgment and award dated July 19, 1985, passed by learned Assistant Judge, Surat, in Land Reference Cases Nos. 78 of 1983 and 79 of 1983. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Agricultural lands of villages Amboli and Kathor, Taluka Kamrej, District Surat, came to be acquired for the public purpose of approach road of 'Tapti River Bridge' by issuance of notification under Section 4 of the Act on January 8, 1979, which was published on June 5, 1979. Claimant, Ibrahimbhai Mohmadbhai Mansoor, who is appellant of First Appeal No.2351 of 1987, was owner of agricultural lands bearing Block No.14 situated at village Amboli, whereas claimant, Dhirajlal Bhikhabhai Chauhan, who is appellant of First Appeal No.2352 of 1987, was owner of agricultural land of Block Nos. 10 and 50 of village Kathor. After following the usual procedure, notices were issued to the claimants under Section 9(3)(4) of the Act. The claimants appeared before the Land Acquisition Officer and claimed compensation of Rs.50/- per sq.mtr. The Land Acquisition Officer, on the basis of material placed before him, made his award on February 4, 1983 and offered compensation for acquired land bearing block No.14 of village Amboli at the rate of Rs.4.50 ps per sq.mtr.; for acquired land bearing Block No.10 of village Kathor at Rs.8.50 ps per sq.mtr., and for land of block No.50 of village Kathor at Rs.7.25 ps per sq.mtr.

3. According to the both claimants, compensation offered by the Land Acquisition Officer was inadequate and they ought to have been awarded compensation at least at the rate of Rs.40/per sq.mtr considering the fact that lands of both the claimants were touching national highway No.8 having high potentiality, and were situated in a developed area having government offices, hospitals, dispensaries, banks, business premises, educational and other institutions, and conveyance facilities were also available near acquired lands. The claimants, therefore, submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court, Surat, for determination of adequate compensation. Accordingly, references were made to the District Court, Surat, which were numbered as Land Reference Cases Nos. 78 of 1983

and 79 of 1983. Both the reference cases were consolidated and common evidence was recorded in Land Reference Case No.78 of 1983. On behalf of claimant, Ibrahimbhai Mohmadbhai Mansoor, who was owner of Block No.14 of village Amboli, was examined at Exh.16, and claimant of Land Reference Case No.79 of 1983, Dhirajlal Bhikhabhai Chauhan was examined at Exh.20. Gulam Mohmad Ibrahim Dupli was examined at Exh.25, who was vendee of plot No.38 and Hashmukhbhai Naginbhai, who was vendee of sale deed Exh.15/6, was examined at Exh.28. The respondents did not produce any oral or documentary evidence to justify the amount offered by the Land Acquisition Officer.

4. The Reference Court, on appreciation of oral as well as documentary evidence, determined market value of acquired land of village Amboli, which was subject matter of Land Reference Case No.78/83, at the rate of Rs.9/per sq.mtr. and awarded Rs.4.50 ps per sq.mtr as additional compensation with statutory benefits under the Act. So far as the lands which were subject matter of Land Reference Case No.79 of 1983, of village Kathor, the Reference Court determined market value of lands of village Kathor at the rate of Rs.17/- per sq.mtr, minus compensation offered by the Land Acquisition Officer. The Reference Court also granted statutory benefits to the claimant of Land Reference Case No.79 of 1983. The claimants, by filing these appeals, have claimed enhanced compensation for agricultural lands of village Amboli at the rate of Rs.25/- per sq.mtr and for agricultural lands of village Kathor bearing Block No.10 at the rate of Rs.23 per sq.mtr and for block No.15 at the rate of Rs.25.50/- per sq.mtr.

5. Learned counsel appearing for the appellants has taken us to the entire record and proceedings of the Reference Court, and submitted that compensation determined by the Reference Court was grossly inadequate and on a lower side considering situation of acquired lands of villages Amboli and Kathor. Learned counsel for the appellants submitted that acquired lands were situated just near the national highway. Learned counsel submitted that, on agricultural lands of village Kathor, bearing block No.10, claimant, Dhirajal Bhikhabhai Chauhan, made a construction in the year 1965 and was running a hotel, as acquired lands were situated just near the national highway. Learned counsel for the appellants submitted that land of block No.10 was converted into non-agricultural land in the year 1980 for which the claimants had produced orders passed by the competent authority for converting lands into

non-agricultural use at Exh.21 and maps for construction at Exh.22. It is submitted by learned counsel for the appellants that the appellants have claimed a reasonable compensation and, hence, the appeals deserve to be allowed.

6. Mr.K.G. Sheth, learned AGP, for the respondents, has submitted that the Reference Court had determined market value of the acquired lands after taking into consideration all the relevant aspects and it cannot be said that compensation determined by the Reference Court was inadequate or on a lower side. Learned counsel for the Government submitted that acquired lands were situated on the eastern side of the national highway, whereas the development had taken place on the western side of the highway and, therefore, the claimants were not entitled to additional amount of compensation and, therefore, the appeals deserve to be dismissed.

7. We have heard learned counsel for the parties at length. We have also taken into consideration documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding both these appeals.

8. Claimant of Land Reference Case No.78 of 1983, Ibrahimbhai Mohmadbhai Mansoor, at Exh.16, deposed that he was owner of agricultural lands of block No.14 situated at village Amboli. That, village Amboli was situated at a distance of 5 furlongs from the national highway. That, eastern portion was also developed area, wherein, many hotels and industries were established. Claimant of Land Reference Case No.79 of 1983, Dhirajlal Bhikhabhai Chauhan, was examined at Exh.20. He deposed that for the land of block No.10, he had obtained N.A. permission and had constructed a hotel and was running business of hotel since the year 1965.

9. Claimant's witness No.3, Gulam Mohmad Ibrahim, Exh.25, deposed that he had purchased lands of plot No.38 from Ishwarlal Maganlal Dalwadi, admeasuring 36 ft x 45 ft for consideration of Rs.3000/= by sale deed dated August 29, 1979. He admitted that the said lands were non-agricultural lands. The witness during his deposition produced sale deed of plot No.38 at Exh.27. He deposed that he had purchased land for the purpose of construction of residential house. In cross examination, he deposed that lands under sale deed Exh.17 were situated at a distance of one furlong from village Kathor.

10. Evidence of claimants shows that lands of villages Amboli and Kathor were situated on the eastern part of national highway No.8, wherein, there was not much development as compared to western part of the national highway. Sale deed Exh.27, on which reliance was placed by the claimants, related to a small area of non-agricultural land, which was sold to vendee, Gulam Mohmad, who was in need of land for construction of his residential house. However, sale deed Exh.27 reflects that price of non-agricultural land in August 1979, i.e. in near proximity of issuance of Section 4 notification, was Rs.42/- per sq.mtr. The lands, which are subject matter of the present appeals, came to be acquired by notification under Section 4(1) of the Act in June 1979. The acquired lands of block No.10 of Land Reference Case No.79 of 1983 were non-agricultural lands, where, claimant, Dhirajlal Bhikhabhai Chauhan, was running a hotel since 1965. The lands sold under sale deed Exh.27 was a small area and, if suitable deduction of 30% is applied, then market value of non-agricultural land of block No.10 of village Kathor would come to Rs.29.40 ps, which is rounded off to Rs.30/- per sq.mtr. It is common knowledge that for determination of market value of agricultural lands, if price of non-agricultural land is made basis, then 1/3rd should be deducted therefrom to ascertain market value of agricultural lands. At the relevant time, market value of acquired non-agricultural land was Rs.30/- per sq.mtr and if 1/3rd is deducted, Rs.20/- per sq.mtr would be the price of agricultural lands of village Amboli and Kathor. The appellants-claimants shall be entitled to the compensation of non-agricultural lands of village Kathor bearing Block No.10 at the rate of rs.30/- per sq.mtr and at Rs.20/- per sq.mtr. for agricultural lands bearing Block No.14 of village Amboli and Block No.50 of village Kathor minus the compensation awarded by the Reference Court.

11. As award of the Land Acquisition Officer was declared on February 25, 1983, because of transitory provision, the claimants shall be entitled to additional amount of 12% on the amount of compensation under Section 23(1-A) of the Act. The claimants shall also be entitled to benefits under the amended provision of Section 23(2) of the Act, i.e. solatium at 30% and interest at the rate of 9% per annum for the first year and, thereafter, at the rate of 15% per annum for the subsequent years till the deposit is made.

12. As a result of foregoing reasons, the appeals

filed by the appellants are partly allowed. It is held that the market value of the acquired agricultural lands bearing Block No.14 of village Amboli on the relevant date was Rs.20 per sq.mtr. whereas, market value of acquired non-agricultural lands bearing Block No.10 of village Kathor on the relevant date was Rs.30/- per sq.mtr and market value of acquired agricultural lands of bearing Block No.50 of village Kathor on the relevant dated was Rs.20/- per sq.mtr. The judgment and award dated July 19, 1985, passed by learned Assistant Judge, Surat, in Land Reference Cases No.s 78 of 1983 and 79 of 1983, is modified to the aforesaid extent. The claimants are entitled to statutory benefits under Sections 23(1-A), 23(2) and interest as per amended Section 28 of the Act. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

13. After pronouncement of the judgment, learned counsel for the appellants has submitted that the appellants had lost their agricultural lands in the year 1979 and, therefore, the respondents should be directed to deposit awarded amount within reasonable time. In our opinion, the request of learned counsel for the appellants deserves consideration and, therefore, we direct the respondents to deposit awarded amount as per this judgment in the reference Court within four months from today.

April 4, 2000 (M.H.Kadri, J.)

(C.K.Buch, J.)
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